

Winchester, KY

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

LEGGETT & PLATT, INC.

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
(IAM), AFL-CIO

Cases 09-CA-194057
09-CA-196426
09-CA-196608

ORDER DENYING MOTION FOR RECONSIDERATION

The Respondent's motion for reconsideration of the Board's Decision and Order reported at 368 NLRB No. 132 (2019) is denied.¹ The Respondent has not identified any material error or demonstrated extraordinary circumstances

¹ Member Emanuel is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S. Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the National Labor Relations Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S. Ct. at 2644. See also, e.g., *D.R. Horton*, 357 NLRB 2277, 2277 fn. 1 (2012), enfd. in relevant part 737 F.3d 344, 353 (5th Cir. 2013); *NLRB v. New Vista Nursing and Rehabilitation*, 870 F.3d 113, 127–128 (3d Cir. 2017); *1621 Route 22 West Operating Company*, 357 NLRB 1866, 1866 fn. 1 (2011), enfd. 725 Fed. Appx. 129, 136 fn. 7 (3d Cir. 2018).

warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.²

Dated, Washington, D.C., February 19, 2020.

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² In support of its motion, the Respondent argues that the Board erroneously failed to retroactively apply *Johnson Controls, Inc.*, 368 NLRB No. 20 (2019), to the present case absent a finding that doing so would impose a “manifest injustice.” To be sure, the Board’s “usual practice” is to retroactively apply changes in the law unless doing so would work a “manifest injustice.” See *SNE Enterprises*, 344 NLRB 673, 673 (2005). But nothing in the Act compels the Board to retroactively apply such changes, whether to all pending cases or to any particular case. To the contrary, whether to retroactively apply a change in the law is “a matter of agency discretion in the first instance.” See *NLRB v. Mosely Mfg. Co.*, 595 F.2d 375, 377 fn. 7 (7th Cir. 1979). To the extent it was not clear in the Board’s prior Decision or Supplemental Decision, we find that retroactive application of *Johnson Controls* would have worked a manifest injustice under the specific circumstances of this case. As noted by the Board in its prior decision, this case had been decided by the Board and was pending appeal at the time *Johnson Controls* issued; the affirmative bargaining order included in the Board’s remedy in this case had been in effect for over 6 months; and reversing the Board’s decision would have disrupted the parties’ bargaining relationship and incentivized parties in other cases to delay compliance with bargaining orders in the hope or expectation of a change in the law. 368 NLRB No. 132, slip op. at 2. We also observed that under the particular circumstances of this case, institutional reasons counseled against retroactive application. *Id.* Those remain.